

JEAN R. URANGA  
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Idaho State Bar No. 1763

BEFORE THE BOARD OF BARBER EXAMINERS

STATE OF IDAHO

In the Matter of the Licenses of:	)	
	)	Case Nos. BAR-2005-4
	)	
SCOTT R. LUSK,	)	
License No. B-2464, Owner,	)	<b>FINDINGS OF FACT,</b>
CUTTING EDGE,	)	<b>CONCLUSIONS OF LAW</b>
License No. BS-1646.	)	<b>AND RECOMMENDED ORDER</b>
	)	
Respondent.	)	
	)	

This matter came on for hearing before the designated Hearing Officer, Jean R. Uranga, on August 28, 2006, on the First Amended Complaint filed by the Board of Barber Examiners. The Board was represented by its Deputy Attorney General, Emily Mac Master, and Respondent, Scott R. Lusk and Cutting Edge, appeared in person and by and through their attorney of record, Lowell Hawkes. Respondent and his counsel participated by telephone.

The Board of Barber Examiners presented testimony and exhibits. Respondents elected not to present any witnesses or exhibits.

During the hearing, Respondents objected to the Board's proposed Exhibit 6. Following the close of the hearing, a briefing

schedule was established to allow both parties to submit written briefs on the issue of admissibility of Exhibit 6. On September 11, 2006, Emily Mac Master filed a notice stating she was withdrawing her proposed Exhibit 6.

### **FINDINGS OF FACT**

1. Scott R. Lusk was licensed by the Idaho State Board of Barber Examiners under license B-2464 to engage in the practice of barbering and license number BS-1646 to operate a barbershop in the State of Idaho. Mr. Lusk was first issued a Barber's License on November 13, 1972, and his shop license for the Cutting Edge was issued on July 25, 1997. The Cutting Edge is located in Aberdeen, Idaho.

2. On October 8, 2004, a Bureau of Occupational Licenses investigator, Stuart Propsom, conducted a routine inspection at the "Cutting Edge" barbershop in Aberdeen, Idaho. An "open" sign was in the front window and Mr. Lusk was in the establishment. Mr. Propsom examined the licenses which Mr. Lusk had displayed in the shop and found both licenses were expired. Mr. Propsom called the Bureau and confirmed Mr. Lusk's personal and shop licenses were expired. Mr. Lusk was provided information on how to renew his licenses. Mr. Propsom advised Mr. Lusk that, until his licenses were renewed, Mr. Lusk had to close the shop. Mr. Lusk responded by saying: "This B.S.", but Mr. Lusk complied and closed the shop. Mr. Propsom then left.

3. On December 14, 2004, Mr. Propsom was again in the Aberdeen area. He checked with the Bureau office and found that Mr. Lusk had not renewed either of his licenses. Mr. Propsom enlisted the assistance of the Chief of Police, Ray Dalling. Together, they entered Mr. Lusk's establishment. Again there was an "open" sign in the window and Mr. Lusk was present in the shop. Chief Dalling cited Mr. Lusk under Idaho Code §18-6305 for doing business without a license. Mr. Lusk was again advised by Mr. Propsom that he had to close the shop, which Mr. Lusk did.

4. On February 24, 2005, Mr. Lusk pled guilty to the crime of doing business without a license and was fined \$63.50. Mr. Lusk had renewed his personal license on December 17, 2004, and his establishment license December 22, 2004.

5. Mr. Lusk was sent renewal notices for both his personal license and establishment license, but again failed to timely renew those licenses. Mr. Lusk's personal license again expired on August 26, 2005, and his establishment license again expired on July 26, 2005.

6. On December 8, 2005, the Board filed the initial disciplinary Complaint against Respondents.

7. On February 27, 2006, Christopher Riley, a Bureau of Occupational Licenses investigator, went to Mr. Lusk's shop, the "Cutting Edge" at approximately 9:10 a.m. The sign in the door posted shop hours as Monday through Friday 9:00 a.m. to 5:00 p.m. and the shop was closed Saturday and Sunday. However, Mr. Lusk's shop was not open on February 27, 2006, when Mr. Riley was there.

8. Investigator Riley, together with another Bureau investigator, Monte Conyers, again went to Mr. Lusk's shop on March 6, 2006. They arrived at approximately 11:30 a.m. and drove by the shop. They noted the shop was open. The Bureau investigators then contacted the Chief of Police, Ray Dalling, and Chief Dalling agreed to accompany them to talk to Mr. Lusk. When they went to Mr. Lusk's barbershop, they found the shop was open and Mr. Lusk was in the shop. Mr. Riley asked Mr. Lusk if he was operating his barbershop without a license and Mr. Lusk replied "yes". Mr. Lusk was again issued a citation by Chief Dalling for doing business without a license in violation of Idaho Code §18-6305.

9. On July 26, 2006, an Order Withholding Judgment was entered on this second misdemeanor charge. Defendant pled guilty to operating a barbershop without a license in violation of Idaho Code §18-6305. He received a one year withheld judgment and was placed on probation with a specific condition that he would not enter into the business of hair cutting without a license. Mr. Lusk was represented by Lowell Hawkes on that plea.

10. Budd Hedrick, the Deputy Bureau Chief for the Bureau of Occupational Licenses, testified. He reviewed the licensing history for Mr. Lusk's personal barber license and his establishment license. He testified that Mr. Lusk had allowed both licenses to expire and were renewed late on multiple occasions over the years.

11. Mr. Lusk elected not to present testimony. In his defense, he argued no one saw him cutting the hair of any customers

on the two occasions when he was cited for operating a business without a license and there is no evidence customers were ever present in the barbershop. The Hearing Officer finds this defense to be without merit. The evidence establishes that Mr. Lusk was present at his business establishment with a sign in the window on the three occasions stating he was open and listing his business hours. His shop had all of the standard tools and implements necessary for cutting hair. Significantly, Mr. Lusk admitted to Mr. Riley that he was operating his barbershop without licenses and Mr. Lusk twice pled guilty to misdemeanor charges of operating without a license. The Hearing Officer finds the evidence establishes that Mr. Lusk was practicing, or attempting to practice, barbering without a barber license and owned a barbershop without a barbershop license on October 8, 2004, and December 14, 2004, as set forth in Court One.

12. In addition, Respondent was attempting to practice as a barber and owned a barbershop establishment without being licensed on March 6, 2006, as set forth in Court Two.

### **CONCLUSIONS OF LAW**

13. As a licensed barber and operator of a licensed barbershop in the State of Idaho, the Respondent is subject to the jurisdiction of the Board of Barber Examiners and the provisions of Title 54, Chapter 5.

14. Respondent's acts as set forth in the Findings of Fact constitute violations of Idaho Code §§54-501, 54-515, 54-516(6),

(7) and (8) and 54-519(1) and (7).

15. The Board of Barber Examiners has authority to issue appropriate sanctions against Respondent.

### **RECOMMENDED ORDER**

Based upon the foregoing, the Hearing Officer recommends that the Board of Barber Examiners impose such disciplinary sanctions as it deems appropriate for Respondent's violations of the statutes.

DATED This 5 day of October, 2006.

**JEAN R. URANGA**

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JEAN R. URANGA  
Hearing Officer

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 5 day of October, 2006, I served true and correct copies of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER by depositing copies thereof in the United States mail, postage prepaid, in an envelope addressed to:

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**JEAN R. URANGA**

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